

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 Chad Everett Braxton,

9 Petitioner,

No. CV-13-01916-PHX-JJT

10 **ORDER**

11 v.

12 Arizona, State of, et al.,

13 Respondents.

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15 At issue is Petitioner Chad Everett Braxton's Second Amended Petition for Writ  
16 of Habeas Corpus (Doc. 22), filed October 10, 2014, to which Respondent filed its  
17 Response on February 27, 2015 (Doc. 30), and Petitioner filed a Reply on March 27,  
18 2015 (Doc. 31). Magistrate Judge Bridget S. Bade issued a Report and Recommendation  
19 ("R&R") in the matter on June 4, 2015 (Doc. 33), to which Petitioner filed objections  
20 styled as a Response to Report and Recommendation on June 15, 2015 (Doc. 34). For  
21 the reasons set forth in the R&R, this Court will deny the Petition.

22 Judge Bade comprehensively and correctly analyzed the issues involved in the  
23 Second Amended Petition, and this Court will adopt the recommendations set forth in the  
24 R&R as well as the reasoning supporting those recommendations. For that reason, it will  
25 not restate those issues or their resolution here in detail. Judge Bade correctly concluded  
26 that Petitioner presented none of the four issues he raises in his Second Amended Petition  
27 on direct appeal in the state court; nor did he raise any of the four issues in any state post-  
28 conviction relief proceeding. Moreover, Judge Bade concluded it is too late to go back to

1 the state court and raise the issues now in either proceeding, as such an action would now  
2 be procedurally barred as untimely. All four claims are thus unexhausted yet  
3 procedurally defaulted. Once claims reach such a posture, a federal court may review the  
4 merits of those claims only if Petitioner can show both cause and prejudice, and, as set  
5 forth in detail in the R&R, Petitioner fails to make either showing under the relevant test.

6 In his Response to the R&R, Petitioner raised no new argument; he simply  
7 repeated the arguments in his Second Amended Petition and his Reply. Thus, Judge  
8 Bade's R&R has already adequately and thoroughly addressed each of Petitioner's  
9 arguments in his Response, and this Court will not review them in detail here again. In  
10 summary, Judge Bade correctly concluded that a mistake by Petitioner in sending his  
11 supplemental appellate brief to the wrong address did not constitute "cause" within the  
12 meaning of *Teague v. Lane*, 489 U.S. 288, 298 (1989). Petitioner's own actions cannot  
13 constitute an "objective factor external to the defense" that impeded his efforts to comply  
14 with Arizona's procedural rules. *See id.* And as Judge Bade also noted, nor can the  
15 Arizona Attorney General's failure to step in and help Petitioner by rerouting his brief to  
16 the correct recipient constitute cause. There simply is no "cause" within the meaning of  
17 *Teague*, and the analysis could stop there, although Judge Bade correctly went on to  
18 justify her recommendation that this Court also find no showing of prejudice either.

19 IT IS ORDERED adopting Magistrate Judge Bade's R&R in its entirety and  
20 incorporating same into this Order (Doc. 33).

21 IT IS FURTHER ORDERED denying the Second Amended Petition for Writ of  
22 Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 22) and dismissing this matter with  
23 prejudice.

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1 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to  
2 proceed *in forma pauperis* on appeal in this matter because the dismissal of the instant  
3 Petition is justified by a plain procedural bar and jurists of reason would not find the  
4 procedural ruling debatable.

5 Dated this 31<sup>st</sup> day of August, 2015.

6   
7 Honorable John J. Tuchi  
8 United States District Judge

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